S.B.Civil Writ Petition NO.2459/2005

Gopi Das vs. Punrasar Hanumanji Trust & ors.

DATE OF ORDER : - 27.4.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. SN Trivedi, for the petitioner.

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Heard learned counsel for the petitioner.

Learned counsel for the petitioner submits that two courts below committed serious illegality in allowing the application of the plaintiff/ respondent for interim relief of injunction and thereafter in rejecting the appeal of the petitioner against the order of rejection of injunction application.

According to learned counsel for the petitioner, the plaintiffs have no right, title and interest in the property in dispute. The plaintiff trust is not a registered trust and, therefore, the suit of the plaintiff was not maintainable.

According to learned counsel for the petitioner, the petitioner is in fact the owner of the temple in question and in fact, they constructed the temple.

According to learned counsel for the petitioner, in case the relief

granted by the trial court will be allowed to stand, the plaintiffs will raise the construction and may alienate the property in dispute.

I have considered the submissions of learned counsel for the petitioner and perused the impugned orders dated 24.11.1992 and 18.2.2005 passed by the trial court and appellate court respectively.

It appears from the order of the trial court that nobody appeared before the trial court to oppose the injunction application and for the reasons best known, instead of filing application for recalling the interim order by showing the reasons for non-appearance, the petitioner preferred appeal in the year 1992 itself, therefore, there was no material even before the appellate court to take different view than the view as taken by the trial court because of the reason that there was even no defence which the petitioner wanted to raise. The appeal remained pending before the first appellate court till 18.2.2005 and the appellate court observed that since 18.12.1992, the appellant sought time for one or the other reason and the file of civil original suit remain tagged with first appeal in which the order of injunction was under challenge.

It appears that one more suit was filed and in that suit, there was order to maintain status quo which was passed on 6.8.1994 and the proceedings of the civil original suit has already been stayed in view of

the pendency of earlier proceedings.

According to learned counsel for the petitioner, that suit in which the interim order was passed on 6.8.1995, has also been dismissed in default against which the appeal is pending. However, learned counsel for the petitioner is not fully aware that whether any interim order was passed in the first appeal in which the impugned order dated 18.2.2005 was passed ?

In view of the facts that nobody appeared to oppose the injunction application and the court below after hearing the plaintiff passed the interim order, there appears to be no illegality in the order passed by the trial court. The first appellate court considered the contention of the petitioner and after examining the facts of the case, dismissed the appeal of the petitioner by taking note of his conduct.

However, learned counsel for the petitioner submitted that the petitioner alone was not responsible for the delay in the proceedings before the first appellate court. If it is so, then also, the first and primary duty of the petitioner was to pursue his appeal and should not become party for adjourning the matter on request of opposite party in a matter arising out of the proceedings under Order 39 Rules 1 and 2 CPC. The petitioner should not have felt helpless before the Court for

requesting it to decide the appeal arising against the order of injunction.

In view of the above discussion, the courts below have not committed any illegality in passing the impugned orders so as to warrant interference by this Court under writ jurisdiction.

I do not find any merit in the writ petition and accordingly the same is hereby dismissed. However, the trial court is directed to decide the suit expeditiously if there is no order of staying further proceedings of the suit by the Court itself or in any other proceedings.

(Prakash Tatia), J.

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